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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/380,932 01/18/00 FIRTH

G 28911/35930

EXAMINER

HM12/0827

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SHIRIYA, M

ART UNIT

PAPER NUMBER

1635

DATE MAILED:

08/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/380,932

Applicant(s)  
FIRTH

Examiner  
Mark L. Shibuya

Art Unit  
1635



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Aug 13, 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24, 26, and 27 is/are rejected.
- 7) ☒ Claim(s) 25 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☒ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Continued Prosecution Application***

1. The request filed on 8/13/01, for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/380,932, is acceptable and a CPA has been established. An action on the CPA follows.
2. Because no amendments or remarks have been filed in response to the previous Office action mailed 2/14/01, all the rejections of record are maintained and simply repeated as follows.

### ***Priority***

3. Acknowledgment is made of applicant's claim for foreign priority based on an application filed as EPO 98/42867 on filed 21 March 1998. It is noted, however, that applicant has not filed a certified copy of the EPO 98/42867, filed 21 March 1998 application as required by 35 U.S.C. 119(b). Because no amendments or remarks have been filed in response to the previous Office action mailed 2/14/01, this objection is maintained for the reasons of record as set forth in the Office actions mailed 2/14/01 and 6/6/00.

### ***Oath/Declaration***

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02. Because no amendments or remarks have been filed in response to the previous Office action mailed 2/14/01, this objection is maintained for the reasons of record as set forth in the Office actions mailed 2/14/01 and 6/6/00.

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***Claim Objections***

5. Claim 25 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits. Because no amendments or remarks have been filed in response to the previous Office action mailed 2/14/01, this objection is maintained for the reasons of record as set forth in the previous Office action mailed 2/14/01.

***Claim Rejections - 35 U.S.C. § 112***

6. Claims 1-11, 19-24, 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Because no amendments or remarks have been filed in response to the previous Office action mailed 2/14/01, this rejection is maintained for the reasons of record as set forth in the Office actions mailed 2/14/01 and 6/6/00.

***Claim Rejections - 35 U.S.C. § 102***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgante et al., WO 96/17082, (applicant's reference B1, IDS filed 11/22/99). Because no amendments or remarks have been filed in response to the previous Office action mailed 2/14/01, this rejection is maintained for the reasons of record as set forth in the Office actions mailed 2/14/01 and 6/6/00.

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Claim 25 is not further treated on the merits because it is an improper multiple dependent claim.  
*See*, above claim objection.

9. Claims 16 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson et al., (applicant's reference C6, IDS filed 11/22/99). Because no amendments or remarks have been filed in response to the previous Office action mailed 2/14/01, this rejection is maintained for the reasons of record as set forth in the Office actions mailed 2/14/01 and 6/6/00.

***Claim Rejections - 35 U.S.C. § 103***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 17-20, 24, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al., (applicant's reference C6, IDS filed 11/22/99), as applied to claims 16 and 22-23 above, and further in view of Grist et al., (applicant's reference C2, IDS filed 11/22/99) and Aldhous, (applicant's reference C1, IDS filed 11/22/99). Because no amendments or remarks have been filed in response to the previous Office action mailed 2/14/01, this rejection is maintained for the reasons of record as set forth in the Office actions mailed 2/14/01 and 6/6/00.

***Conclusion***

12. Claims 1-24, 26, and 27 stand finally rejected. Claim 25 is objected to for being an improperly multiple dependent claim.

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13. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Mark L. Shibuya (SRC)*, whose telephone number is (703) 308-9355, and/or to the patent analyst, *Katrina Turner*, whose telephone number is (703) 305-3413.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *John LeGuyader* may be reached at (703) 308-0447.

16. Any inquiry of a general nature or relating to the status of this application should be directed to the *Group receptionist* whose telephone number is (703) 308-0196.

Mark L. Shibuya  
Patent Examiner  
Technology Center 1600  
August 22, 2001



JOHN L. LeGUYADER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600